

4-812. Judgment on writ of garnishment, claim of exemption and order to pay.

[For use with Rules 2-802 and 3-802 NMRA in the Magistrate and Metropolitan Courts]

STATE OF NEW MEXICO
COUNTY OF _____
IN THE [MAGISTRATE] [METROPOLITAN] COURT

_____, Plaintiff (*Judgment Creditor*)

v.

No. _____

_____, Defendant (*Judgment Debtor*)

_____, Garnishee

**JUDGMENT ON WRIT OF GARNISHMENT, CLAIM OF
EXEMPTION AND ORDER TO PAY**

This matter coming before the court, the court finds:

- [] 1. At the time the writ of garnishment was served on the garnishee, the amount of \$_____ was unpaid and owing to the judgment creditor.
- [] 2. As a result of this garnishment proceeding, judgment creditor has spent additional costs and fees of \$_____
- [] 3. The total amount of judgment and costs to date are \$_____ plus interest of _____% per year from _____, _____.
- [] 4. The garnishee is not an employer of the judgment debtor and has certified that it has mailed copies of the application for a writ of garnishment; the writ of garnishment; a notice of right to claim exemptions; a claim of exemption form and a copy of its

answer to the judgment debtor(s) or their attorney of record, if any.

☐ 5. The judgment debtor:

☐ has not filed a claim of exemption;

☐ has filed a claim of exemption and the judgment creditor has not disputed the claim of exemption for the following property and such money or property is therefore exempt:

_____; or

☐ has filed a claim of exemption which has been disputed and after hearing, the court finds that the following property is exempt from garnishment

☐ has not filed a claim of exemption; or

☐ 6. The garnishee:

☐ is in default;

☐ is indebted to the judgment debtor in the amount of \$_____;

☐ is indebted to the judgment debtor for wages;

☐ is not indebted to the judgment debtor;

☐ holds property of the judgment debtor;

☐ does not hold property of the judgment debtor.

☐ 7. Pursuant to the Support Enforcement Act, the garnishee:

☐ is withholding \$_____ of the judgment debtor's income pursuant to a notice to withhold income; or

☐ is not withholding any income of the judgment debtor pursuant to such a Notice.

☐ 8. Pursuant to Section 35-12-16 NMSA 1978, the judgment creditor:

☐ is entitled to additional fees and costs of \$_____; or

☐ is not entitled to additional fees and costs.

THE COURT ORDERS:

☐ 1. **Default judgment against garnishee**

The judgment creditor recover from the garnishee the sum of \$_____, plus _____ percent per annum interest from the date the application was executed, the garnishee having failed to answer the writ;
or

☐ 2. **Payment of money other than wages**

The judgment creditor recover from the garnishee the sum of \$_____, which includes _____% per annum interest thereon from the date the application was executed to the date the answer was filed, such sum being held by garnishee other than as wages;
or

☐ 3. **Wage withholding other than child or spousal support**

The judgment being other than for child or spousal support, the judgment creditor recover from the garnishee the sum of \$_____, plus interest at the original judgment rate, until paid in full, to be deducted from the judgment debtor's wages.

The garnishee shall pay the judgment debtor only

- (a) 75% of his disposable earnings (*salary less social security, federal and state tax withholdings, and any other deduction required by law*) for any pay period;

OR

- (b) an amount each week equal to forty times the federal minimum hourly wage rate;

whichever is greater.

The balance of the judgment debtor's disposable earnings shall be paid over to the judgment creditor each payday until the judgment herein is satisfied, after this balance is first used to pay any prior garnishment. If the wages of the judgment debtor are not subject to garnishment because of the application of the formula set forth above, this order shall continue and shall automatically take effect when the wages of the judgment debtor shall increase to an amount which creates disposable earnings based upon the formula set forth above.

If the moneys being withheld pursuant to a notice to withhold income under the Support Enforcement Act exceed the otherwise garnishable amounts, this

garnishment shall continue in effect until the notice to withhold income has been voided, modified, suspended or terminated, at which time the full amount allowed for garnishment shall be paid to the judgment creditor.

If the wages being withheld pursuant to a notice to withhold income under the Support Enforcement Act are less than twenty-five percent (25%) of the judgment debtor's disposable earnings, the difference between the amount withheld for child or spousal support and the amount equal to twenty-five percent (25%) of the judgment debtor's disposable earnings shall be paid to the judgment creditor, until the child or spousal support notice to withhold income has been voided, modified, suspended or terminated, at which time the full amount allowed for garnishment shall be paid to the judgment creditor.

☐ 4. **Money or property other than wages**

☐ The money or property held by the garnishee is exempt from garnishment and the writ of garnishment in this case is hereby released and discharged; and the garnishee no longer has any obligation to withhold wages, money or property from the judgment debtor on account of that writ.

☐ The garnishee, having no money or property of the judgment debtor, is discharged and released from the writ of garnishment.

☐ The garnishee shall turn over to the judgment creditor the property of the judgment debtor shown on Exhibit A attached hereto.

5. **Costs and fees**

[] The judgment creditor is awarded, in addition to the above amounts, the sum of \$_____ as additional costs and fees pursuant to Section 35-12-16 NMSA 1978.

[] The garnishee shall be reimbursed \$_____ for its costs and \$_____ for its attorney's fee the same to be paid by the _____. If paid by the judgment debtor said sum shall be paid from the first moneys otherwise payable to the judgment creditor but shall not reduce the amount the judgment creditor is to be paid, as ordered above.

7. **Payments**

Payments under this order shall be sent to:

(name of judgment creditor)

(address of judgment creditor)

(city, state and zip code)

_____, _____

Judge

[As amended, effective July 1, 1992; January 1, 1996; December 3, 2001.]